

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

STEVEN TERRY HILL,

CV 00-598-JE

Plaintiff,

ORDER

v.

JEAN HILL,

Defendant.

STEVEN TERRY HILL
SID # 4760535
Two Rivers Correctional Institution
82911 Beach Access Rd.
Umatilla, OR 97882-9419

Plaintiff, *Pro Se*

HARDY MYERS

Attorney General

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Attorneys for Defendant

BROWN, Judge.

Magistrate Judge John Jelderks issued Findings and Recommendation (#61) on October 9, 2002, in which he recommended the Court deny Petitioner Steven Terry Hill's Petition for Writ of Habeas Corpus (#2) on the grounds that Petitioner's unexhausted claims are procedurally defaulted and Petitioner did not make a showing of cause and prejudice or actual innocence sufficient to excuse any of the defaulted claims. On November 15, 2002, noting Petitioner had filed no objections, the Court adopted the Findings and Recommendation and dismissed this matter.

On May 6, 2004, Petitioner filed a Motion for Relief from Order alleging he timely filed objections to the October 9, 2002, Findings and Recommendation by handing the documents to prison officials for mailing on October 21, 2002. On June 23, 2004, the Court granted Petitioner's Motion for Relief from Order and directed the Clerk to reopen this action.

In his Objections filed September 10, 2004, Petitioner asserted any procedural default should be excused because he is actually innocent. On August 11, 2005, Magistrate Judge Jelderks issued a Supplement to Findings and Recommendation (#111) in which he addressed Hill's assertion that his alleged actual innocence constitutes a "fundamental miscarriage of justice exception" to procedural default. The Magistrate Judge concluded

Petitioner's assertion does not, in this case, constitute an exception to procedural default. Accordingly, the Magistrate Judge recommended this Court deny Hill's Petition for Writ of Habeas Corpus on the ground that Petitioner's procedural default should not be excused because even if Petitioner could "pass through the gateway of actual innocence, his constitutional claims are without merit."

On August 17, 2005, apparently before Petitioner received a copy of the August 11, 2005, Supplement to Findings and Recommendation, Petitioner filed a Motion to Withdraw his Claims of Actual Innocence (#112). On August 26, 2005, the Findings and Recommendation and Supplement to Findings and Recommendation were referred to this Court for review pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b).

On September 6, 2005, several days after this matter was referred to this Court for review, Petitioner filed a Notice of Removal from Consideration of Motion for Leave to Withdraw Claim of Actual Innocence (#114). On September 19, 2005, Petitioner filed Objections to the Magistrate Judge's Supplement to Findings and Recommendation.

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). *See also United States v.*

Bernhardt, 840 F.2d 1441, 1444 (9th Cir. 1988); *McDonnell Douglas Corp. v. Commodore Business Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982).

This Court has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation or the Supplement to Findings and Recommendation.

CONCLUSION

The Court **ADOPTS** Magistrate Judge Jelderks's Findings and Recommendation (#61) and Supplement to Findings and Recommendation (#111). Accordingly, the Court **DENIES** Hill's Petition for Writ of Habeas Corpus (#2) and **DISMISSES** this matter **with prejudice**.

IT IS SO ORDERED.

DATED this 23rd day of September, 2005.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge

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